

Expert Report of Jessica Teal

My name is Jessica Teal and I have served as the CEO and Principal of Teal Media, a full-service creative agency since I founded the company in 2009. I have been in the graphic design field since 1999 and have nearly 25 years of experience. Teal Media is a team of 48 with remote offices around the country. We typically have an active roster of 80 simultaneous clients and use stock photography on a daily basis in our work. On average, we help our clients search for and acquire 60 images per year.

I have been asked to provide an expert report on the realistic cost to a prospective user, both in 2010 and in the current market, for the use of a specific stock photograph on a website used for promoting a business.

Sourcing, purchasing, and using stock photography for client projects is a critical aspect of a creative agency's work. It is very important to consider the reason for using an image, the license associated with a particular image when using imagery in professional design work, and the likely cost to the client. Most stock photography has one of the following license types:

License Type	Definition
Royalty-Free License	Royalty-free has become the default license type of selling stock images. This license type grants the buyer a determined set of rights to use the image in multiple ways, for a flat, one-time fee. This means you pay for the license only once, and you can use it forever within the accepted ways, without any further payment obligations. It is important to note that you are acquiring the right to use a photo in a certain way, not the property of the photo itself. The photographer who created the photo is still the owner of the photo. He/she holds the copyright, the official term pointing the ownership of photos, music, paintings, texts, and other intellectual physical or non-physical creations. Retaining copyright is what allows photographers and artists from other disciplines to sell their work multiple times and generate more income. These photos are NOT copyright free or free images at all. In other words, stock agencies sell licenses that give the buyers the right to use the photos, but they don't transfer the copyright, the ownership of the images.
Royalty-Free Extended License	An extended license extends the terms of a standard royalty free license so that an image can be used in derivative products (e.g. mugs, t-shirts, website templates) there are usually limits on the number of products that can be produced/sold.
Rights Managed License	In a rights-managed license the buyer needs to define exactly where the image will be used, this includes the number of copies printed or length of time the image will be in use, size of image and industry it will be used in. Because every image use is accounted for this allows for the buyer to exclusively license the image for use in their industry hence meaning that a competitor will not be able to license the same image (this sometimes becomes a problem with royalty free where anyone can download and use and image) RM licenses are very restrictive and you need to re-license the image to use it again in a different medium. They are usually the most expensive option too.

Editorial Use License	Images which feature logos, brands, recognizable products, events or celebrities are licensed as editorial use meaning they can only be used as part of newsworthy stories. Editorial images cannot be used in any form of advertising or commercial application.
Creative Commons License	Creative commons licenses are a series of license types that were setup by a nonprofit organization to help photographers easily license their work. Creative commons licenses allow photographers to protect their work in simple to understand terms while still providing it for use free of charge to image users. Creative commons license always require an attribution (a credit to the image creator) and in a lot of cases require that derivative work be 'shared alike', images are often not available for commercial use.
Public Domain	This is usually an absence of a license agreement, the image creator has placed their work into the 'public domain' for use by anyone in whatever way they like.

Sources: https://budgetstockphoto.com/stock_photo_license_types.html,
<https://www.stockphoto-guides.com/use/royalty-free/what-are-royalty-free-images>

After reviewing the complaint, I am aware that the image in question is "ProduceVegetableGrilled002" from Prepared Food Photos (see image on right).

Based on my expertise in the design field, knowing how this particular image was used upon my review of the complaint, and comparing this type of photo with images to similar images provided in well-known stock photography agencies in the industry (see comparable image table below), I would classify this image as one that would generally be offered as a **royalty-free image**. Indeed, understanding that the image was offered on iStock, and having reviewed the iStock agreements from that time period, as well as Getty Images' responses to a subpoena, it is apparent that this was in fact offered as a royalty-free image.






I also examined the particular use of the image on the homepage of the Pool World website from 2011, using the Internet Archive Wayback Machine. You can view the archived version of the site here: <https://web.archive.org/web/20220614200142/https://poolworld-grillworld.com/>

My interpretation of the design reasoning behind the use of this particular photo on this page is promote Pool World's associated business, Grill World, which sells different types of grills. Knowing this, the designer likely was trying to promote the grill itself, not the food on the grill. The designer could have selected any number of different photos showing a grill in use – the specific vegetables and meats were likely not a consideration at all – the grill in use was likely the most important factor in the designer's selection of the image.

The following table shows the current pricing for royalty-free licenses for a comparable image from several such well-known stock photo companies, including iStock.

Table of Comparable Images and Classifications from Reputable Stock Agencies

iStock Images	Adobe Stock	Getty Images
		
<u>Image A</u>	<u>Image B</u>	<u>Image C</u>
Basic = \$2.90 Premium = \$7.00	Royalty-free License = \$2.99 (assuming highest possible subscription cost) Extended License = \$79.99	Small Resolution = \$175 Medium Resolution = \$375 Large Resolution = \$499

Also worth noting, on the iStock image sample, the following Frequently Asked Question appears at the bottom of the page:

*Royalty-free licenses let you pay once to use copyrighted images and video clips in personal and commercial projects on an ongoing basis without requiring additional payments each time you use that content. It's a win-win, and it's why everything on iStock is only available royalty-free — **including all Vegetable images** and footage.*

In terms of stock photography providers, there are two major types – microstock agencies, macro or traditional stock agencies.

Microstock agencies source their images from both professional and amateur photographers. Accordingly, microstock agencies can provide images at a much lower cost than traditional stock agencies. Most microstock websites operate on subscription or credit-based system where you pre-buy credits which allow you to make downloads of images. Although microstock images are not free, they normally cost between \$1 and \$5 depending on the resolution needed. Most microstock agencies have several million images in their libraries.

Macro or traditional stock agencies sell rights managed (RM) or royalty-free images. These agencies still provide images at an affordable price – typically \$50-\$500/image, pending the resolution downloaded.

Teal Media has primarily relied on three core traditional stock photography agencies over the past 15 years – [iStock](#), [Getty Images](#), and [Adobe Stock](#). These three providers are well-known and reputable providers of stock imagery across the creative and design industry.

The table below outlines the current prices for **royalty-free** images from these and other well-known providers in the industry.

Stock Service	Price per Image	Subscription Pricing
iStock*	<p>\$12 per credit for most images. iStock has 2 levels of royalty-free photo collections</p> <ul style="list-style-type: none"> • Essential - usually 1 credit per image like this • Signature - usually 3 credits per image like this <p>The more credits you purchase (various packages are available), the deeper the discount per credit</p>	<ul style="list-style-type: none"> • Basic (Essentials collection only) = Starts at \$29/mo for 10 downloads/mo (\$2.90 per download) • Premium (Essentials + Signature) = Starts at \$70/mo for 10 downloads/mo (\$7.00 per download) • Premium + Video = Starts at \$99/mo for 10 downloads/mo (\$9.99 per download)
Getty Images**	<ul style="list-style-type: none"> • Small = \$175 / \$140 if you purchase a pack of 15 • Medium = \$375 / \$280 if you purchase a pack of 15 • Large = \$499 / \$400 if you purchase a pack of 15 	<p>In 2020, Teal purchased an annual subscription to Getty images for \$4,450 which allowed for up to 250 downloads per year and included Premium photos with basic rights</p>
Adobe Stock	<p>Adobe Stock sells images by the credit with pricing at 5 credits for \$49.95 up to 500 credits for \$3,999.99. Standard stock images are priced at</p>	<ul style="list-style-type: none"> • Level 1 = 10 standard stock images at \$29.99/mo (\$2.99 per image) • Level 2 = 40 standard stock images or videos at \$79.99/mo (\$1.99 per image, \$11.99 per video) • Level 3 = 750 standard stock images or videos at \$199.99/month (\$.026 per image, \$7.99 per video)

* Getty Images acquired iStock on February 6, 2006

** Getty Images also owns Thinkstock and officially retired the Thinkstock brand in mid-2019. Thinkstock now redirects to iStock




To my knowledge, I am not aware of a stock service that operates only by subscription at such a high amount that Prepared Food Photos does (\$999/mo). As you can see in the table above, the most expensive service is \$199.99/month – nearly a 400% difference in price. And that service makes images available for licensing one by one or at least in small numbers.

In recent years, a number of free stock imagery resources have emerged as well. Here are just a few:

- [Canva](#)
- [Unsplash](#)
- [Life of Pix](#)
- [Negative Space](#)

- [Pexels](#)

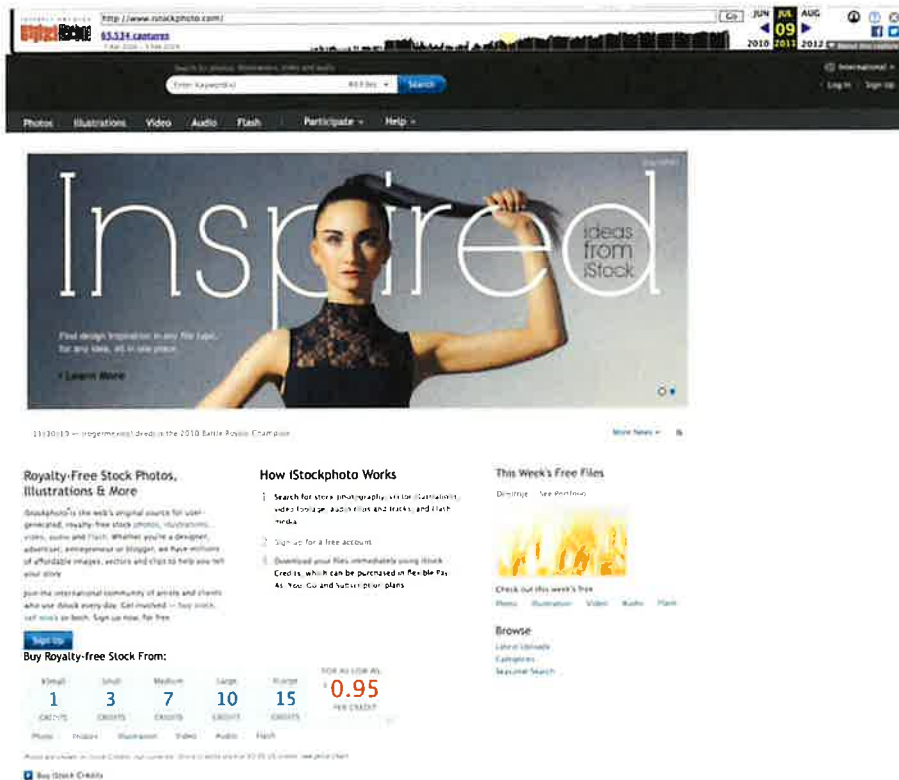
On these sites, a user seeking to show how vegetables could be cooked on a grill, or seeking other images showing how nice it could be to have a grill available, as a way of attracting viewers to a store selling grills, could obtain royalty-free photos without any charge. For example:

	https://www.canva.com/photos/MAEisA02ypE-griller-with-barbeque-cooking/ FREE
	https://unsplash.com/photos/grilled-barbecues-on-black-and-gray-grill-D99y38Na5Xo FREE
	https://www.pexels.com/photo/grilling-kebab-53148/ FREE

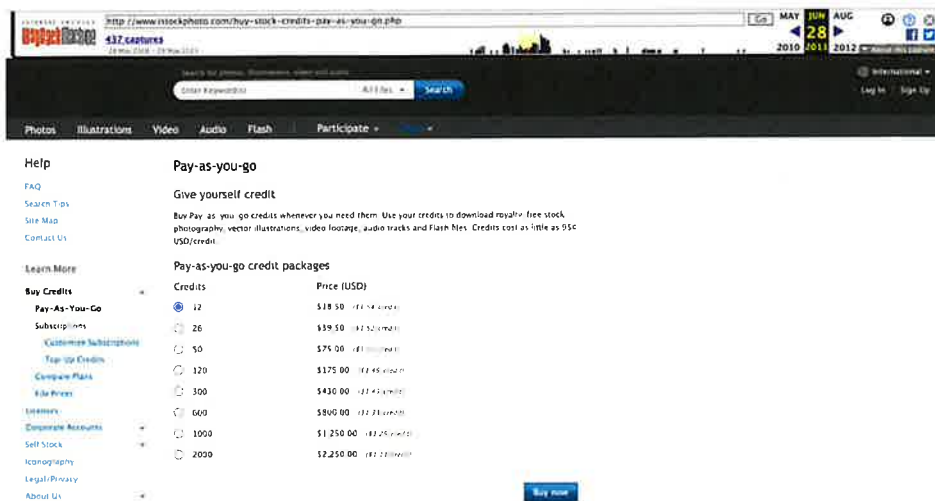
Moreover, in my experience, clients seeking images to illustrate their websites are often highly sensitive to the prices of possible images and their alternatives. Because of the large number of images available without charge, or for low prices per image, a user asked to pay more than ten thousand dollars for the use of a single image such as the photo at issue in this case would not likely agree to that sum. Such a user would just go elsewhere and pay perhaps \$12 (such as for one of the comparable iStock images) or even pay nothing (as for images on such sites as Pexels, Creative Commons or Canva).

Understanding that the image in question was used circa 2011, I also referenced the iStock photo website via the Internet Archive Wayback Machine to examine stock imagery pricing from that time period. As you can see from the screenshots below, a royalty-free image used for website purposes, likely would have cost \$1.67 at most (via the pay-as-you-go purchasing

option). The responses from Getty Images to a subpoena, which I have reviewed, show that the web page below accurately captures its pricing model at the time, and show that in the period from 2009 and 2010, though late August 2010, 52 licenses to use the particular image were sold for prices ranging upward from \$0.95.



Source: <https://web.archive.org/web/20110709042825/http://www.istockphoto.com/>



Source: <https://web.archive.org/web/20110628170325/http://www.istockphoto.com/buy-stock-credits-pay-as-you-go.php>

Additional Disclosures about Jessica Teal

- I have not personally produced any written materials for industry publications in the past 10 years, though articles have been written about me and my expertise:
 - <https://thewomenweadmire.com/2024/01/29/the-top-women-leaders-of-dc-for-2024/>
 - <https://www.youtube.com/watch?app=desktop&v=Cx4PdOTCnz0>
 - <https://womentalkdesign.com/speakers/jessica-teal/>
 - <https://gdusa.com/features/responsible/jessica-teal>
 - <https://www.forbes.com/sites/deniserestauri/2015/07/09/why-your-mentor-doesnt-need-to-look-like-you/?sh=6791a9cf5dc6>
 - <https://www.howinteractivedesign.com/design-creativity/design-change/designing-action-jessica-teal-everytown-for-gun-safety/>
- I have never testified as an expert at trial or by deposition
- I do not require compensation for my study or testimony